IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Civil Appellate Side

Writ Petition No. 6181 of 2003

1. Kum.Jyoti Sudam Chavan
and another ..Petitioners

vs.

State of Maharashtra & Ors. ..Respondents

Shri R.K.Mendadkar for petitioners
Shri C.R.Sonawane, A.G.P. for respondent nos. 1 to 4.

CORAM:A.P.Shah &
D.G.KARNIK JJ.
29th September,2003

P.C.

. Rule. Returnable forthwith. Learned Counsel for the respondents waives service. By consent of the parties, writ petition is heard finally at the stage of admission.

2. The learned Counsel for the petitioners drew our attention to the decision of the Division Bench in the case of Chandrakant Bajirao Shinde Vs. State of Maharashtra and others; 2003(2) Mah.L.J.471 and the unreported judgment of this Court in Writ Petition No.2745 of 1988 (Raviprakash Babulasing Parmar Vs. State of Maharashtra and ors) decided on July 28, 2003.

3. The Scrutiny Committee in its judgment observed as under:

> "The traits quoted at Sr.No.1 to 4 above are not associated to Thakar/Thakur, Scheduled Tribe Community which is quoted at Sr.No.44 in Scheduled Tribe list. The candidate could not establish affinity towards Thakar/Thakur, Scheduled Tribe community.

4. The Caste Scrutiny Committee went on examining the school records and other records pertaining to the near relations of the petitioners to find out whether the petitioners belong to "Thakar" Scheduled Tribe and ultimately hold that the petitioners do not belong to Thakar Scheduled Tribe and held their cast claim invalid.

5. In Raviprakash Babulalsing Parmar Vs. State of Maharashtra and others (supra) the Division Bench after taking into consideration the judgment of the Supreme Court in Palghat Jilla Thandan Samudhya Samrakshna Samiti and another Vs. State of Kerala and another (1994) 1 SCC 359 and the Constitution Bench judgment of the Supreme Court in the State of Maharashtra vs. Milind and others; 2001(1) Mh.L.J.SCC 4 in the light of the legal proposition

propounded in the aforesaid judgments held that the Presidential Order has to be read as it is and applied accordingly without any tinkering whatsoever. Presidential Order notifies "Thakar" without any area restriction being Scheduled Tribe within the entire State of Maharashtra. The Caste Scrutiny Committee was not justified in proceeding with the enquiry on the basis of socio-cultural traits, affinity test and ethnic linkage to find out whether the petitioners belong to Thakar Scheduled Tribe when admittedly the documents produced by them show in unequivocal terms that their caste was "Thakar".

6. It is urged by the learned Counsel for the petitioners that the primary record in respect of the grand father of the petitioners shows the caste as "Hindu Thakar" as on 10th August, 1929 in Book No.1 at Sr.No.25 but in the same book it is carried forward to as "Hindu Bhat" in the same register at Sr.No.131. It is urged that there was no material before the concerned Head Master to support the caste entry as "Hindu Bhat" at Sr.No.131 and the said entry cannot be treated as reliable in view of entry "Hindu Thakar" in Book No.1 at Sr.No.25. Our attention is also brought to the school record in respect of the brother of the petitioners' grand

father viz. Ramchandra Ganpat Thakur whose caste has been shown as "Hindu Thakar" as on 21st June, 1927. The learned counsel for the petitioners has contended that the school record of two persons has not at all be considered by the Caste Scrutiny Committee.

7. In the circumstances, the petition has to be allowed in part which we hereby order and set aside the impugned order dated 28th January, 2003 passed by the Caste Scrutiny Committee and remit the matter to the Caste Scrutiny Committee to re-examaine the petitioners' caste claim in the light of the observations made in this judgment. Petition is disposed of accordingly with no order as to costs.